To Dialogue or Not to Dialogue on IP in China

Secretary Yellen arrived in China today July 6, 2023. According to the press, she is hoping to restart dialogue on a range of issues. Do intellectual property discussions also need to be restarted? More importantly, had they ever stopped?

BCLT Director Mark Cohen has just published a timely article that discusses the kind of practical and quiet diplomacy that has continued on intellectual property issues between the intellectual property offices of the United States and China for over twenty years. The article discusses the parallel attorney disciplinary campaigns being conducted in the United States and China that primarily address bad-faith trademark filings. “Parallel Play: The Simultaneous Professional Responsibility Campaigns Against Unethical IP Practitioners by the United States and China” and was just published in the Akron Law Review. Among other matters, the article provides insights on how the two countries have learned from each other’s experiences in addressing bad faith IP actions during the last several years, the role of multilateral groups such as the TM-5 in discussing important IP challenges, and the practical role of “Track II Diplomacy” in pioneering resolution of contested issues. The article also describes one concrete example where China cooperated in an investigation, while declining to acknowledge the extent of such cooperation.

If you are interested in reading more on how IP gets horse-traded in high-level negotiations, you may also want to read another article that Cohen has also written on the role of US-China “super-dialogues” (such as those once chaired by Treasury) and their impact in intellectual property. Cohen previously has noted that despite their advantages in coordinating a whole of government approach, these super-dialogues “could produce a number of negative outcomes: issues and agencies were alienated from the process or subsumed into macro-economic discussions; issues were horse-traded against other concessions in a manner where line agencies lost control; Cabinet-level or high-level agency officials wasted their time in high-level meetings with little relevance to their agency; and non-experts led discussions to no avail.”

What does the future look like for US-China IP, technology, and other cooperation? Join BCLT on July 13th at 5 P.M. Pacific when we discuss the recent visits of former Ambassador Max Baucus, former Federal Circuit Chief Judge Rader, Andy Rothman of Matthews Asia, and two current USPTO officials when they discuss their recent visits to China. The program is co-sponsored with the Asia Society of Northern California.